

The Nautical Institute – London and Solent Branches

**‘Seaworthiness and the ISM Code’**

**Opening Address by**

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I consider this a very great honour to have been invited to present the opening address and to chair this seminar – on a subject I feel passionate about. I am sincerely of the view that this will be one of, if not the, most important seminars which have been held on the subject of the ISM Code in recent years.

We have a most impressive programme ahead of us with practical input from serving ship masters, views from a wide range of eminent lawyers and an important perspective from the largest of the P&I Liability insurers. I am in no doubt that we will be presented with some very informative and interesting papers but I would hope that this will not be an event where you, ladies and gentlemen, can sit back and take it easy – your active participation is crucial if we are going to take away something of real value from this seminar.

We are now more than seven years on from the Phase One compliance deadline – in many ways it doesn't seem that long ago but much has happened in the meantime. In the run up to Phase One implementation on 1<sup>st</sup> July 1998 there was much confusion about the very nature of this Safety Management System in many sectors of the industry. The idea of creating all sorts of potentially self incriminating evidence was anathema to many seafarers and ship operators – would this ISM Code really expect all sorts of records and reports to be produced which would very clearly pin the blame on me? This new individual who had been created – the Designated Person – or D.P. or even D.P.A. in some quarters – was he really expected to know all that was going on with the management of safety on board the company ships? Was he really expected to report all of these problems to the Chairman or Chief Executive of the Company? What would be the implications for the Chairman or Chief Executive if they did know, or should have known, about safety related matters on board their ships? Would the D.P. really have access to whatever resources were necessary to ensure that the ships operated safely? What were to be the criminal exposure of the D.P. – of the Chairman – of the Master if they didn't comply with the ISM Code? These and many other issues were discussed in detail amongst lawyers and academics and there was not a day went by when Lloyds List and the other Maritime Publications did not carry articles about this new phenomena which was about to be thrust upon the international shipping industry.

In 1998 I was invited by Lloyds of London Press to write a Practical Guide to the Legal and Insurance Implications of the ISM Code. I set out the position as well as I was able but there really were so many unknowns – indeed I believe there were probably more questions raised in the book than solution being offered. I did sincerely believe, although with a certain amount of naivety, that many of these questions

would be answered fairly quickly as cases started to be determined through the Courts following 1<sup>st</sup> July – however, this was slow to happen and many of those big questions remain unanswered.

During the mid to late 1980's and early 1990's the international shipping industry was in deep recession and seriously struggling. Those that were managing to hang on took drastic steps to reduce their operating costs. As they were perhaps making savings with one hand – their actions were leading to an enormous increase in the number and size of accidents and claims which in turn led to considerable increases in their insurance costs. However, the other outcome was that people were being killed, ships were being lost and the marine environment was becoming increasingly polluted. The industry seemed to have lost the ability to regulate and manage its own affairs. The solution which was developed and introduced to get the industry back onto the rails was the ISM Code.

For many the Code was met with resentment – they managed their ships and safety perfectly well – or so they believed – and were adamant that they did not need and they did not want the ISM Code. The reality is that many of those people did not understand what the ISM Code is – and I still encounter people who do not understand the nature of the Code. It was not necessarily their fault though – in far too many instances the first the Master and the seafarers knew about the ISM code was when boxes of procedure manuals arrived on board with a note saying, basically, ...here it is now get on with it...!! Is it surprising that there was resentment, misunderstanding and apathy.

In year 2000, I undertook a major piece of research to try and establish whether, and / or to what extent, ISM implementation was having any measurable effect upon the safe management and operation of ships i.e. whether the accidents and claims were starting to show a downward trend. I would have to be honest and say that there was little evidence which would support the suggestion that the trend was going down – at an industry wide level. However, there were a relatively small number of individual companies who appeared to be achieving remarkable results. The conclusion reached was that it was probably too early to expect any significant movement across the industry.

A similar survey has just been conducted by the IMO – seven years post implementation - but the results and findings are still to be published.

Earlier this year I was asked by LLP, or rather INFORMA as it now is to prepare an updated Second Edition of the Practical Guide to the Legal and Insurance Implications. This caused me to focus my attention on what changes had taken place with the ISM Code since the first edition was published in 1989. The manuscript is now completed and the new edition is being printed and should be available in November. There are a hand-full of cases with some relevance – Simon Kverndal Q.C. will be discussing the *Eurasian Dream* case this afternoon and I am sure more than one of our speakers will be making reference to the *Torepo* case. Some may even refer to the case of the *Patraikos II* which was heard in the Singapore courts. However, there would appear to have been very few cases indeed where the significance of ISM related issues and the management of safety have been addressed by the Courts. There have been a few, relatively minor, criminal prosecutions but no

real earth shattering developments. Port State Control became tougher, and improved their own understanding of safety management systems but there have been no major disruptions to international trade on account of ship operators failing to comply with the requirements of the ISM Code.

Actually, I wish I had been aware of the programme of today's seminar much earlier in the year – I suspect there is likely to be much coming out of today which will be of relevance and thus might have delayed completing the manuscript for a little while.

So, ladies and gentlemen, let us find out, during the course of today, what advances we have made in our understanding of the ISM Code and specifically the relevance of the concept of 'seaworthiness' to the Code and the implications as far as ship operators and seafarers are concerned.